

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Barrington Kirksville License LLC)	
KTVO, Kirksville, Missouri (21251))	MB Docket No. 12-1
)	CSR- _____
Petition for Waiver of Section 76.92(f) of the)	
Commission's Rules)	
)	

To: Chief, Media Bureau

PETITION FOR SPECIAL RELIEF

Barrington Kirksville License LLC (“Barrington”), licensee of television station KTVO, Kirksville, Missouri (Facility ID 21251) (“KTVO”), respectfully requests, pursuant to Section 76.7(a)(1) of the rules,¹ a waiver of the significantly viewed exception to the network nonduplication rule set forth in Section 76.92(f).² KTVO is affiliated with the ABC broadcast television network on its primary stream and with the CBS broadcast television network on a digital multicast stream. As a result of the significantly viewed exception, cable systems serving KTVO’s core local television market community of Bloomfield, Iowa, are permitted to carry the entire distant signal of out-of-market CBS-affiliated station KCCI, Des Moines, Iowa (Facility ID 33710), which includes network programming that duplicates the programming broadcast locally by KTVO. Similarly, pursuant to the significantly viewed exception, cable systems serving KTVO’s core local television market community of Fairfield, Iowa, are permitted to carry the entire distant signals of out-of-market ABC-affiliated station KCRG-TV, Cedar Rapids,

¹ 47 C.F.R. § 76.7(a)(1).

² 47 C.F.R. § 76.92(f).

Iowa (Facility ID 9719) (“KCRG”) and CBS-affiliated station KGAN Cedar Rapids, Iowa (Facility ID 25685), both of which include network programming that duplicates programming broadcast locally by KTVO.

The Commission determined in 1972 that KCCI (formerly KRNT) was then significantly viewed in Davis County, where Bloomfield, Iowa, is located.³ At that time, the Commission also determined that KCRG and KGAN (formerly WMT) were significantly viewed in Jefferson County, where Fairfield, Iowa, is located.⁴ As demonstrated below, however, KCCI’s out-of-market distant signal no longer attains the over-the-air viewing levels required for significantly viewed status in Bloomfield, nor do KCRG or KGAN qualify for significantly viewed status in Fairfield—key communities in KTVO’s local market. Accordingly, Barrington requests that the FCC waive the significantly viewed exception to the network non-duplication rule so that station KTVO may enforce its exclusivity rights in its local market with regard to the out-of-market duplicating network programming of KCCI on the cable systems serving Bloomfield and with regard to the out-of-market duplicating network programming of KCRG and KGAN on the cable systems serving Fairfield.

³ See Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order, 36 FCC 2d 326, 401 (appendix B) (1972), *aff’d sub nom. American Civil Liberties Union v. FCC*, 523 F.2d 1344 (9th Cir. 1975) (the “1972 Cable Reconsideration Order”). The Commission maintains an up-to-date version of the list on its website, reflecting stations added since 1972 and stations subject to programming deletions in particular communities. The most recent version of the list is available at <http://transition.fcc.gov/mb/significantviewedstations120611.pdf> [hereinafter “1972 Significantly Viewed List”]. KCCI is listed as significantly viewed in Davis County at page 128 of the revised Significantly Viewed List.

⁴ 1972 Significantly Viewed List, at 132.

I. Background

KTVO, an affiliate of the ABC television network on its primary stream and an affiliate of CBS on its multicast stream, serves the small Ottumwa-Kirksville Designated Market Area (“DMA”) (199th ranked). KCCI is affiliated with the CBS television network and serves the Des Moines-Ames, Iowa, DMA (71st ranked). ABC-affiliated KCRG and CBS-affiliated KGAN both serve the Cedar Rapids-Waterloo-Iowa City-Dubuque, Iowa, DMA (87th ranked). DirecTV, DISH Network, LISCO, MCC Iowa LLC, and Mediacom operate satellite or cable systems serving the communities of Bloomfield and Fairfield, which are within the protected exclusivity zone of KTVO and outside the protected zones of out-of-market stations KCCI, KCRG, and KGAN. Because both of these communities are within KTVO’s network nonduplication protected zone, KTVO ordinarily would have the right to require these systems to delete the duplicating network programming on the distant signals of KCCI, KCRG, and KGAN. Under the exception set forth in Section 76.92(f), however, these systems are not required to delete the duplicating network programming if the distant stations currently are deemed to be significantly viewed in these communities. As noted, under the 1972 Significantly Viewed List, KCCI is deemed to be significantly viewed in Bloomfield and KCRG and KGAN are deemed to be significantly viewed in Fairfield.

II. Request for Waiver

Because the presumption created by the 1972 Significantly Viewed List may no longer reflect real-life circumstances in particular markets, the Commission has adopted procedures for waiving the significantly viewed exception based on studies by an independent, professional audience survey organization showing that a station, over two consecutive one-year

periods, does not meet the applicable significantly viewed benchmarks in particular areas served by a cable system at issue.⁵ To obtain waiver relief, the petitioner must demonstrate, “utilizing community- or system-specific data, to one standard error, . . . that the station in question has not met [the FCC’s] standards for significant viewing for two consecutive years.”⁶ In order to be presumed significantly viewed in a community, stations affiliated with ABC or CBS—such as KCCI, KCRG, and KGAN—must achieve *both* “a share of viewing hours of at least 3 percent (total week hours) and a net weekly circulation of at least 25 percent” in over-the-air homes in the community.⁷

As explained below, according to community-specific data obtained by Barrington from Nielsen Media Research (“Nielsen”), KCCI no longer attains these viewing levels in Bloomfield, nor do KCRG and KGAN attain these viewing levels in Fairfield. Thus, Barrington respectfully requests a waiver of the significantly viewed exception to the network nonduplication rule to enable it to enforce network nonduplication rights in its local market with respect to the duplicating distant network programming on the cable and satellite systems serving these communities.

To provide a representative sample of over-the-air viewing of KCCI in Bloomfield and of KCRG and KGAN in Fairfield, Barrington commissioned Nielsen, an independent professional survey organization, to prepare a special tabulation of diaries obtained from non-cable and non-alternative-delivery system (“non-ADS”) households located in the zip

⁵ Waiver of Section 76.92(f), however, does not eliminate the distant signal from the Significantly Viewed List.

⁶ See *KCST-TV, Inc.*, 103 FCC 2d 407, 413 (1986).

⁷ 47 C.F.R. § 76.5(i).

codes comprising Bloomfield and Fairfield.⁸ As explained in the attached Nielsen study,⁹ the data was compiled based on the Nielsen Station Index surveys conducted over four-week periods during the combined Nielsen sweeps measurement periods for February and May of 2010 and for February and May of 2011. Nielsen's study shows that, during the survey periods, the average share of viewing hours and average net weekly circulation (cume) of KCCI in Bloomfield and of KCRG and KGAN in Fairfield were as follows:

KCCI

Survey Periods	Households Studied	Share of Total Viewing		Average Weekly Circulation	
		Percent	Standard Error	Percent	Standard Error
February 2010 & May 2010 (combined)	6	0.00	0.00	0.00	0.00
February 2011 & May 2011 (combined)	3	0.00	0.00	0.00	0.00

KCRG

Survey Periods	Households Studied	Share of Total Viewing		Average Weekly Circulation	
		Percent	Standard Error	Percent	Standard Error
February 2010 & May 2010 (combined)	5	0.00	0.00	0.00	0.00
February 2011 & May 2011 (combined)	4	0.00	0.00	0.00	0.00

⁸ Specifically, the Nielsen survey results are for the following zip codes assigned by the U.S. Postal Service: for Bloomfield, 52537; for Fairfield, 52556. See Attachment 1. Pursuant to FCC policy, Barrington sent notifications to interested parties of its intent to purchase data from Nielsen. See *Meredith Corporation*, 22 FCC Rcd 12932, at ¶5 (rel. July 13, 2002) (“*Meredith*”).

⁹ See Attachment 1. The data submitted, along with the description of methodology, are as agreed on between Barrington and Nielsen. See *Gulf-California Broadcast Co.*, 23 FCC Rcd 7406, at ¶4 n.15 (rel. May 6, 2008) (“*Gulf-California*”).

KGAN

Survey Periods		Share of Total Viewing		Average Weekly Circulation	
	Households Studied	Percent	Standard Error	Percent	Standard Error
February 2010 & May 2010 (combined)	5	0.00	0.00	0.00	0.00
February 2011 & May 2011 (combined)	4	0.00	0.00	0.00	0.00

The Nielsen study demonstrates that, during the first 12-month period, KCCI's share of total viewing hours in Bloomfield was zero percent and its net weekly circulation was zero percent. In Fairfield, KCRG and KGAN also received a zero percent share of total viewing hours and a zero percent net weekly circulation. The results were the same during the second 12-month period for all three stations. Thus, KCCI fell below the significantly viewed standard in Bloomfield, and KCRG and KGAN fell below the significantly viewed standard in Fairfield.

* * *

Accordingly, inclusion of the out-of-market Des Moines station KCCI and of out-of-market Cedar Rapids stations KCRG and KGAN on the 1972 Significantly Viewed List should no longer deprive KTVO of its network non-duplication rights with respect to KCCI in Bloomfield and with respect to KCRG and KGAN in Fairfield. Thus, Barrington respectfully requests that the FCC waive the significantly viewed exception to the network nonduplication rule so that its station KTVO may assert important network program exclusivity rights in its core local market communities of Bloomfield and Fairfield.

Respectfully submitted,

BARRINGTON KIRKSVILLE LICENSE LLC

By:



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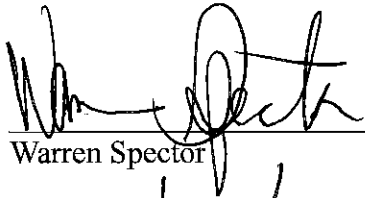
May 31, 2012

* Member of the Bar of Maryland; not admitted in the District of Columbia. Supervised by principals of the firm.

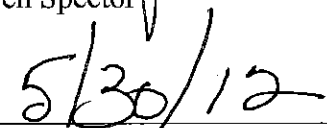
DECLARATION OF WARREN SPECTOR

I, Warren Spector, declare as follows:

1. I am Senior Vice President of Barrington Kirksville License LLC, the Licensee of KTVO, Kirksville, Missouri.
2. I have read the foregoing Petition for Special Relief, and to the best of my knowledge, information, and belief formed after reasonable inquiry, it is well-grounded in fact and is warranted by existing law and it is not interposed for any improper purpose.



Warren Spector



Date

ATTACHMENT 1



The attached report provides audience net weekly circulation (cume) and share information among non-cable/non-ADS households for KCCI, KCRG and KGAN during the Nielsen Station Index (NSI) survey conducted over four week periods during the February 2010, May 2010, February 2011 and May 2011 measurement periods. The report is based on series of Zip codes for the communities of Bloomfield and Fairfield, IA. Households will maintain the reported Nielsen Viewers in Profile (VIP) weights used to project in-tab sample households to universe estimates for their respective measurement periods. This study measures non-cable/non-ADS household viewing between 7AM-1AM, Sunday to Saturday.

The sample source for this survey consisted of non-cable/non-ADS TV households returning usable television viewing diaries. NSI procedures were used for distributing diaries and for compiling the estimated audience projections in this report. Average quarter hour projections were computed by summing weights for quarter hours in the daypart for the non-cable/non-ADS in-tab households and dividing by the number of quarter hours in the daypart. The weights which were used for projections are those used to project in-tab sample households to universe estimates in the regular Nielsen Viewers in Profile analysis. Share and cume estimates as well as their respective standard errors are computed for each of the geographies as follows:

Shares of total viewing are computed by dividing average quarter hour Su-Sa 7AM-1AM projections of a given station for the non-cable/non-ADS in-tab households by the average quarter hour Su-Sa 7AM-1AM projections in non-cable/non-ADS households across all stations. The associated standard error is calculated using the accepted formula for computing the standard error of a ratio estimate and is shown below:

The average weekly circulation (cume) is an average of the four weeks of the measurement period. The cume was computed by summing the weights for all non-cable/non-ADS households tuning at least one quarter hour to a given station within the cycle during the Su-SA 7AM-1AM daypart and dividing by the sum of all non-cable/non-ADS weights within the given measurement period for each week. The cume for each week in the measurement period is then summed and divided by the number of weeks in the measurement period to compute the average weekly cume. The associated standard error for the average weekly cume is calculated using the accepted formula for computing the standard error of a ratio estimate. This standard error is the error of the average weekly cume; it is not an average of the weekly standard error. The formulas used are shown below:

Share

$$Share = \frac{\sum_1^n (w * Qhrs(s))}{\sum_1^n (w * Qhrs(t))}$$

Share Standard Error



$$\text{Std Error} = \sqrt{\frac{n}{n-1} * \sum_1^n \left[\frac{(w * Qhrs(s)) - (\text{Share} * w * Qhrs(t))}{\sum_1^n (w * Qhrs(t))} \right]^2}$$

where n = number of intab households

where w = household weight

where $Qhrs(s)$ = total quarter hours tuned to station of interest by household

where $Qhrs(t)$ = total quarter hours tuned by household

Average Weekly Cume

$$\text{Average Weekly Cume} = \frac{1}{z} * \sum_1^z \left[\frac{\sum_1^n (HH \text{ Weight} * x)}{\sum_1^n HH \text{ Weight}} \right]$$

Average Weekly Cume Standard Error

$$\text{Std Error} = \sqrt{\frac{1}{z^2} \sum_1^z \left[\frac{n}{n-1} * \sum_1^n \left[\frac{(x - \text{Week Cume}) * HH \text{ Weight}}{\sum_1^n HH \text{ Weight}} \right]^2 \right]}$$

where z = number of weeks in analysis (with non-zero intabs)

where n = number of intab households in week

where $x = 0$ if household did not tune station of interest

where $x = 1$ if household did tune station of interest

The attached report is representative of the viewing patterns of the non-cable/non-ADS households of the geographic area surveyed.

Nielsen data may not be changed or altered by a client and represented as a Nielsen study.

**Nielsen Significant Viewing Study
Sun-Sat 7AM-1AM
Non-Cable, Non-ADS Diary Households
KCRG-Cedar Rapids, IA**

Community (zip codes)		Feb10, May10 combined	Feb11, May11 combined
Fairfield, IA 52556 (Jefferson County)	Number of Intabs	5	4
	Net Weekly Circulation	0.00	0.00
	Circulation Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00

**Nielsen Significant Viewing Study
Sun-Sat 7AM-1AM
Non-Cable, Non-ADS Diary Households
KGAN-Cedar Rapids, IA**

Community (zip codes)		Feb10, May10 combined	Feb11, May11 combined
Fairfield, IA 52556 (Jefferson County)	Number of Intabs	5	4
	Net Weekly Circulation	0.00	0.00
	Circulation Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00

**Nielsen Significant Viewing Study
Sun-Sat 7AM-1AM
Non-Cable, Non-ADS Diary Households
KCCI-Des Moines, IA**

Community (zip codes)		Feb10, May10 combined	Feb11, May11 combined
Bloomfield, IA 52537 (Davis County)	Number of Intabs	6	3
	Net Weekly Circulation	0.00	0.00
	Circulation Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00

CERTIFICATE OF SERVICE

I, Jean Weeks, a secretary with the law firm of Covington & Burling LLP, certify that on this 31st day of May 2012 I caused copies of the foregoing Petition for Special Relief to be served by first-class U.S. mail on the following:

KCCI
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Raleigh, NC 27602

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New York, NY 10019-3789

KGAN
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Washington, DC 20037

KGAN Licensee, LLC
600 Old Marion Rd. N.E.
Cedar Rapids, IA 52406

KCRG
Cedar Rapids Television Company
501 2nd Ave S.E.
Cedar Rapids, IA 52401

KCRG
Cedar Rapids Television Company
2nd Ave. at 5th Street, NE
Cedar Rapids, IA 52401

KYOU
KYOU License Subsidiary, LLC
2131 Ayrley Town Boulevard, Suite 300
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KGCW
Burlington Television Acquisition Licensing
LLC
915 Middle River Drive, Suite 409
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KIIN
Iowa Public Broadcasting Board
Post Office Box 6450
Johnston, IA 50131

KWKB
KM Television of Iowa, L.L.C.
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DIRECTV, Inc.
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El Segundo, CA 90245

DISH Network L.L.C.
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Attn: Executive Vice President and General
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111 West Franklin Street
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City of Fairfield
Environmental & Franchise Utilities Cmte.
118 S. Main
Fairfield, IA 52556

Iowa Utilities Board
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Jean Weeks

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		(8) ZIP CODE 20004-2401
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FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED		
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IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)		
(13) APPLICANT NAME Barrington Kirksville License LLC		
(14) STREET ADDRESS LINE NO 1 650 East Algonquin Road		
(15) STREET ADDRESS LINE NO 2 Suite 300		
(16) CITY Schaumburg		(17) STATE IL
		(18) ZIP CODE 60173
(19) DAYTIME TELEPHONE NUMBER (INCLUDING AREA CODE) 847-8841877		(20) COUNTRY CODE (IF NOT IN U S A) US
FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED		
(21) APPLICANT (FRN) 0015042096		(22) FCC USE ONLY
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(23A) FCC Call Sign/Other ID KTVO		(24A) Payment Type Code(PTC) TQC
		(25A) Quantity 1
(26A) Fee Due for (PTC) \$1,355.00		(27A) Total Fee \$1355.00
		FCC Use Only
(28A) FCC CODE 1 Kirksville,MO		(29A) FCC CODE 2 X
SECTION B - Applicant Information		
(23B) FCC Call Sign/Other ID		(24B) Payment Type Code(PTC)
		(25B) Quantity
(26B) Fee Due for (PTC)		(27B) Total Fee
		FCC Use Only
(28B) FCC CODE 1		(29B) FCC CODE 2